

**MARIA RAMIREZ**

Claimant contends she is entitled to an award of permanent partial disability (PPD) based on Dr. Murati's 34 percent impairment rating and 58 percent task loss opinion.

Claimant argues the opinions of Drs. Hunsberger and Carabetta lack credibility. Claimant requests future medical treatment.

Respondent argues the ALJ correctly accorded greater weight to the opinions of Drs. Carabetta and Hunsberger. Respondent maintains the evidence establishes any maladies claimant has are degenerative and unrelated to her work injury.

The issues raised for the Board's consideration are:

1. What is the nature and extent of claimant's disability?
2. Is claimant entitled to future medical treatment?

#### **FINDINGS OF FACT**

Claimant began working for respondent on November 18, 2009. Her job required cutting large pieces of meat with a hook and an air pneumatic blade and cutting smaller pieces of meat using a hook and a knife.

On June 1, 2011, while claimant was working in a bent over position, a piece of meat fell and struck the right side of her head. Claimant reported the accident to her supervisor, who took her to the nurse's station. Claimant returned to work the same day. She experienced a little pain when the accident occurred, but had no pain when she returned to work. About a week after the accident, claimant began experiencing pain in her right hand, right knee, right ankle and right shoulder.

Claimant testified that at work on August 4, 2011, she bent over, felt a pop and experienced pain in her low back. Claimant notified her supervisor about the incident and again went to the nurse's station. The nurse applied heat on her back and directed claimant to complete an accident report. Claimant returned to work the same day. In August 2011, claimant began seeing the nurse on a regular basis.

Claimant testified that in April 2012 her back hurt so much she could not continue working. She asserted she attempted to do her job, but could only perform 25 percent of the work. Respondent suspended her and terminated her employment on April 26, 2012. Claimant has engaged in no employment since her termination.

Claimant denied previous work-related injuries. She claimed her accidental injuries caused constant pain in her neck, right shoulder, back, right knee, right heel and right ankle. According to claimant, her pain worsened with increased physical activity.

Claimant consulted Danny Briggs, a physician assistant, from August 19, 2011, to December 16, 2011. Claimant's complaints encompassed the mid-lumbar spine, right

hand, right arm, right shoulder and right knee. Mr Briggs provided conservative treatment, including ice and moist heat, medication, physical therapy and light duty.

Claimant was also seen by Terry R. Hunsberger, D.O., from December 29, 2011, to November 1, 2012. Claimant provided a history of a November 30, 2011, accidental injury, causing left shoulder pain after pulling heavy pieces of meat. Although claimant complained of pain of six on a one to ten pain scale, Dr. Hunsberger's findings on physical examination were normal. Claimant demonstrated full left shoulder range of motion, but Dr. Hunsberger found tenderness at the anterior left shoulder.

Claimant registered complaints regarding her June and August 2011, accidental injuries, consisting of pain in her right shoulder, both hands, both wrists, both knees and hip pain bilaterally.

Dr. Hunsberger treated claimant conservatively for chronic low back pain and injury to her left shoulder. On January 12, 2012, the doctor found claimant at maximum medical improvement (MMI) and released her to regular duty regarding her left shoulder.

A February 21, 2012, thoracic MRI scan revealed mild scoliosis and mild degenerative spondylosis. A cervical MRI scan conducted on November 17, 2011, revealed mild bulging at the C6-7 disc that lateralized to claimant's asymptomatic left side; mild degenerative cervical spondylosis with straightening of the neck's normal curvature; and a mild broad based disc protrusion at C7-T1. No central canal stenosis was apparent.

Dr. Hunsberger concluded: 1) claimant had diffuse right-sided body pain with massive complaints with no objective findings; 2) claimant was at MMI and will require no additional treatment; 3) claimant should return work without restrictions; and 4) claimant had no permanent disability.

At the request of claimant's counsel, C. Reiff Brown, M.D. examined claimant on March 14, 2012. Claimant told Dr. Brown she continued to have lumbosacral discomfort that increased with physical activity, including bending, lifting, and prolonged sitting and standing. Claimant complained of pain in both shoulders, with decreased range of shoulder motion bilaterally, and right hand and right wrist pain. Claimant asserted her neck and upper thoracic pain awakened her from a sound sleep.

Dr. Brown's impressions were claimant had a mild cervical sprain; early acromial impingement syndrome with rotator cuff tendinitis bilaterally; possible right carpal tunnel syndrome; lumbar spine degenerative arthrosis; and possible internal derangement of the right knee. Dr. Brown related claimant's symptoms to her work injury of June 2011 and repetitive trauma from her work activity following that injury.

Dr. Brown recommended a referral to an orthopedic surgeon for diagnostic studies and appropriate treatment. In Dr. Brown's opinion, claimant's treatment could include work

restrictions, physical therapy, shoulder and scapular trigger point injections, epidural steroid injections, right knee injections and surgical treatment.

On August 21, 2012, Vito J. Carabetta, M.D. examined claimant at the request of the ALJ. Claimant complained of pain in the right side of her body from the neck down the back, into the right arm and right leg, with variable intensity. Claimant asserted her worst symptoms were in the lower right extremity. All symptoms were constant and unimproved. Claimant had right hand numbness with paralyzed digits at times. Claimant also reported symptoms starting in the left side of her body. Claimant reported pain in her teeth. Symptoms were aggravated by physical activity. Claimant took non-prescription ibuprofen.

Dr. Carabetta's impression was claimant had diffuse right-sided body pain that developed gradually, involving the entire right side of her body, then the left side, with pain in her teeth, and numbness and paralyzed digits in her right hand. Dr. Carabetta reported claimant's complaints were subjective without objective findings on examination. He considered fibromyalgia as a diagnosis, but claimant had no physical findings for that diagnosis. Dr. Carabetta found no treatable conditions.

On April 4, 2013, Dr. Carabetta again evaluated claimant at the ALJ's request. Dr. Carabetta's findings were the same as in his previous examination. Dr. Carabetta had no clinical explanation for claimant's complaints. Claimant's history suggested she had a cervical sprain, but there was no objective evidence to support that diagnosis. Claimant had diffuse tenderness without objective findings on physical examination. In Dr. Carabetta's opinion, claimant had reached MMI.

Dr. Carabetta could not rate claimant's impairment using the range of motion model in the *AMA Guides*<sup>1</sup> because claimant had full range of motion in the cervical spine and in both upper extremities. Claimant demonstrated no focal weakness. Dr. Carabetta opined claimant could be rated "based strictly on her subjective complaints[,] perhaps [an] assessment of 3% whole person impairment."<sup>2</sup> However, he could not identify a particular part of the *AMA Guides* to support his rating. Dr. Carabetta imposed no permanent restrictions.

At the request of claimant's counsel, Pedro A. Murati, M.D., examined claimant on October 15, 2012. Dr. Murati testified claimant's pain over time spread into her upper and lower back, a progression he often sees when areas adjacent to an injured extremity develop sprains because they overwork to compensate for the injury. If a treating

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<sup>1</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *AMA Guides* unless otherwise noted.

<sup>2</sup> Carabetta report (April 4, 2013) at 4.

physician does not restrict the individual's activities, the injury accelerates. Dr. Murati found no reason to believe claimant embellished her symptoms.

Dr. Murati testified claimant had a significant rotator cuff sprain or tear; impingement in both shoulders, consistent with the rotator cuff injuries; mild glenohumeral crepitus on the right and severe on the left, causing a grinding sensation in the joints; decreased cervical range of motion, consistent with myofascial pain syndrome; and trigger points in both shoulder girdles, extending into the cervical paraspinal muscles. Regarding the lower extremities, Dr. Murati found a missing right hamstring reflex and missing bilateral ankle jerks and decreased sensation along the right S1 dermatome, suggesting radiculopathy. Regarding claimant's back, Dr. Murati found tenderness over the L5 spinous process and tenderness to palpation with increased tone or muscle spasms on the left; positive extension signs bilaterally, consistent with radiculopathy; and positive right SI joint tenderness.

In Dr. Murati's opinion, respondent should have placed claimant in appropriate light duty and provided treatment for her injuries. Dr. Murati would have prescribed physical therapy, EMG/nerve condition studies, myofascial release techniques, splinting for the right wrist and possibly surgery. For the low back and bilateral SI joint dysfunction, Dr. Murati would have prescribed cortisone injections.

Dr. Murati testified under DRE Category II, claimant had a neck sprain and under Category III, lumbar radiculopathy. Dr. Murati rated claimant's permanent impairment at 34 percent of the whole body, encompassing both upper extremities, the neck and the low back. Dr. Murati marked "no" on 11 out of 19 of claimant's job tasks for a 58 percent job task loss.

#### **PRINCIPLES OF LAW AND ANALYSIS**

The Board finds the ALJ correctly concluded claimant did not sustain her burden to prove her accident, or repetitive trauma, resulted in permanent functional impairment. The Board therefore adopts the ALJ's conclusion that claimant should be denied an award of PPD. The Board also finds the ALJ correctly denied claimant future medical treatment.

The preponderance of the credible evidence consists of medical records and reports of Dr. Hunsberger, an orthopedic surgeon and one of claimant's treating physicians, and Dr. Carabetta, a court ordered neutral physician. The Board finds the opinions of these physicians are credible and persuasive. Dr. Hunsberger concluded: 1) claimant had diffuse right-sided body pain with massive complaints with no objective findings; 2) claimant was at MMI and required no additional treatment; 3) claimant should return to work without permanent restrictions; and 4) claimant had no permanent disability.

Dr. Carabetta noted claimant's history suggested she sustained a cervical sprain, but the doctor could find no objective evidence to support that diagnosis. Dr. Carabetta

found claimant had diffuse tenderness without objective findings on physical examination, and claimant had reached MMI. Dr. Carabetta could not use the range of motion model in the *AMA Guides* because claimant had full range of motion in the cervical spine and in both upper limbs. Claimant had no focal weakness. The doctor found “based strictly on her subjective complaints[,] perhaps [an] assessment of 3% whole person impairment,”<sup>3</sup> but he could not reference a particular part of the *AMA Guides* to support his opinion. Dr. Carabetta imposed no permanent restrictions. The inference from Dr. Carabetta’s findings is that claimant has no permanent impairment of function under the *AMA Guides* because no diagnosis could be reached based on only claimant’s subjective complaints and given claimant’s lack of deficits in range of motion, strength and sensation.

Dr. Murati’s opinion, including his impairment rating, are unpersuasive because they are in conflict with the opinions of Drs. Hunsberger and Carabetta. Claimant’s subjective symptoms seem substantially out of proportion to his lack of objective findings on physical examination and diagnostic testing. The evidence from Dr. Brown does not address the issue of permanent impairment of function.

Claimant also did not sustain her burden to overcome the presumption, which arose when she was reached MMI, that she would need no additional medical treatment.<sup>4</sup>

### **CONCLUSIONS**

1. Claimant has not sustained her burden to prove she sustained permanent impairment of function as a result of her accident. An award of PPD is accordingly denied.
2. Claimant is not entitled to future medical compensation.

### **AWARD**

**WHEREFORE**, the Board orders that the Award of Administrative Law Judge Pamela J. Fuller dated August 14, 2014, is affirmed in all respects.

**IT IS SO ORDERED.**

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> K.S.A. 2011 Supp. 44-510h(e).

Dated this \_\_\_\_\_ day of February, 2015.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

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Honorable Pamela J. Fuller, Administrative Law Judge